

Exhibit A

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02-06-2004 03:24PM FROM-FENWICKWEST 37	+1(415)3950879	T-162 P.001 F-108						
 FENWICK & WEST LLP SAN FRANCISCO OFFICE 275 BATTERY ST., SUITE 1500 SAN FRANCISCO, CA 94111 TEL 415.875.2300 FAX 415.281.1350 WWW.FENWICK.COM								
FACSIMILE TRANSMISSION								
<u>CONFIDENTIAL</u>								
DATE: February 6, 2004		CLIENT-MATTER NO.: 22930-06067						
TO:								
<table border="1"><thead><tr><th>NAME</th><th>FAX NO.</th><th>PHONE NO.</th></tr></thead><tbody><tr><td>Reemmer Elaine L. Gott Group Art Unit 5627 Commissioner for Patents</td><td>(703) 872-9306</td><td>(703) 308-5391</td></tr></tbody></table>	NAME	FAX NO.	PHONE NO.	Reemmer Elaine L. Gott Group Art Unit 5627 Commissioner for Patents	(703) 872-9306	(703) 308-5391		
NAME	FAX NO.	PHONE NO.						
Reemmer Elaine L. Gott Group Art Unit 5627 Commissioner for Patents	(703) 872-9306	(703) 308-5391						
FROM: Chikara Chien FENWICK (415) 875-2319								
NUMBER OF PAGES WITH COVER PAGE: 17 ORIGINAL WILL NOT FOLLOW								
MESSAGE:								
AMENDMENT A								
Applicant: Tom Van Horn et al. App. No.: 09/863,801 Filing Date: May 22, 2001 Title: ATTENDING PRODUCT INVENTORY GROUPINGS FOR SALES IN A GROUP-BUYING ENVIRONMENT App. Div. No. 22930-06067								
CAUTION - CONFIDENTIAL								
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PAGE 018 * RCV AT 02/06/2004 03:24 PM [Eastern Standard Time] * SVR:USPTO-EFXXRF-6/26 * DNIS:2738300 * CSID:4152811350 * DURATION (mm:ss):10-28								



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DATE: February 6, 2004

CLIENT-MATTER NO.: 22930-06067

TO:

NAME	FAX NO.	PHONE NO.
Examiner Elaine L. Gort Group Art Unit 3627 Commissioner for Patents	(703) 872-9306	(703) 308-6391

FROM: Colleen Chien**PHONE:** (415) 875-2319

NUMBER OF PAGES WITH COVER PAGE: 17

ORIGINAL WILL NOT FOLLOW

MESSAGE:**AMENDMENT A**Applicants: Tom Van Horn *et al.*

App. No.: 09/863,801

Filing Date: May 22, 2001

Title: ATTAINING PRODUCT INVENTORY GROUPINGS FOR SALES IN A GROUP-BUYING
ENVIRONMENT

Atty. Dkt. No. 22930-06067

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PTO/SB/21 (modified)

Approved for use through xx/xx/xx, OMB 0651-0031

Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

0001/PTO Rev. 10/95		U.S. Department of Commerce Patent and Trademark Office		Application Number	09/863,801
TRANSMITTAL FORM (to be used for all correspondence during pendency of filed application)				Filing Date	May 22, 2001
				First Named Inventor	Tom Van Horn et al.
				Group Art Unit Number	3627
				Examiner Name	Elaine L. Gort
Total Number of Pages in This Submission		16	Attorney Docket Number		22930-06067

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ENCLOSURES (check all that apply)	
<input checked="" type="checkbox"/> Fee Transmittal Form (in duplicate) <input checked="" type="checkbox"/> Deposit Account Authorization Enclosed <input type="checkbox"/> Return Receipt Postcard <input type="checkbox"/> Response to Notice to File Missing Parts <input type="checkbox"/> Assignment & Recordation Cover Sheet <input type="checkbox"/> Declaration <input type="checkbox"/> Power of Attorney <input type="checkbox"/> Application Data Sheet <input type="checkbox"/> Information Disclosure Statement & PTO-1449 <input type="checkbox"/> Copies of IDS Cited References <input type="checkbox"/> Request for Corrected Filing Receipt <input type="checkbox"/> Request for Correction of Recorded Assignment <input checked="" type="checkbox"/> Amendment A: [13] Pages <input type="checkbox"/> After Final <input type="checkbox"/> Status Request <input type="checkbox"/> Revocation and Substitute Power of Attorney	<input type="checkbox"/> Issue Fee Transmittal <input type="checkbox"/> Letter to Chief Draftsperson <input type="checkbox"/> Formal Drawing(s): [] Sheet(s) of Figure(s) [] <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
REMARKS:	

SIGNATURE OF ATTORNEY OR AGENT		
Signature:	<i>Colleen Chien</i>	
Attorney/Reg. No.:	Colleen Chien, Reg. No. P-55,062	Dated: February 6, 2004

CERTIFICATE OF FACSIMILE TRANSMISSION		
I hereby certify that this correspondence, including the enclosures identified above, is being transmitted on the date shown below via facsimile to: Examiner Elaine L. Gort, Group Art Unit 3627, Commissioner for Patents, at the facsimile number indicated below.		
Signature:	<i>Colleen Chien</i>	
Typed or Printed Name:	Colleen Chien	Dated: February 6, 2004
Facsimile Number:	1-703-672-9306	

22930/06067/SF/5114239.1

FEE TRANSMITTAL for FY 2004

Patent fees are subject to annual revision.

Complete if Known

Application Number 09/863,801
 Filing Date May 22, 2001
 First Named Inventor Tom Van Horn et al.
 Examiner Name Elaine L. Gort
 Art Unit 3627
 Attorney Docket No. 22930-06067

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☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 476.00)

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None
☒ Deposit Account

Deposit Account Number 19-2555

Deposit Account Name Fenwick & West LLP

The Commissioner is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments
☒ Charge all required fee(s) or any underpayment of fee(s) due under 37 CFR §1.16 or §1.17 during the pendency of this application.
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)				(\$)	0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	(OR 5 Prev. Paid For)	Extra Claims	Fee from before	Fee Paid
28	20	6	18	108
Independent Claims	6	3	86	258
Multiple Dependent				

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	88	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	**Reissue independent claims over original patent	
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2)				(\$)	366

*or number previously paid, if greater. For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	85	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	2053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	110
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	280	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(g)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.128(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify):

SUBTOTAL (3) (\$ 110)

*Reduced by Basic Filing Fee Paid

SUBMITTED BY

Name (Print/Type) Colleen Chien

Registration No. (Attorney/Agent)

P-55,062

Complete (if applicable)

Telephone (415) 875-2319

Signature

Chien

Date

February 6, 2004

FEE TRANSMITTAL for FY 2004

Patent fees are subject to annual revision.

Complete if Known

Application Number 09/863,801
 Filing Date May 22, 2001
 First Named Inventor Tom Van Horn et al.
 Examiner Name Elaine L. Gort
 Art Unit 3627
 Attorney Docket No. 22930-06067

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☐ Applicant claims small entity status. See 37 CFR 1.27

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*or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

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1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

SUBTOTAL (3) (\$ 110)

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Colleen Chien	Registration No. (Attorney/Agent)	P-55,062	Telephone (415) 875-2319
Signature		Date	February 6, 2004	

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IN THE UNITED STATES

PATENT AND TRADEMARK OFFICE

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APPLICANTS: Tom Van Horn *et al.*

APPLICATION NO.: 09/863,801

FILING DATE: May 22, 2001

TITLE: ATTAINING PRODUCT INVENTORY GROUPINGS FOR SALES IN A GROUP-
BUYING ENVIRONMENT

EXAMINER: Elaine L. Gort

GROUP ART UNIT: 3627

ATTY. DKT. NO.: 22930-06067

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence, including the enclosures identified below, is being transmitted via facsimile on the date shown below to: Examiner Elaine L. Gort, Group Art Unit 3627, Commissioner for Patents, at the facsimile number of (703) 872-9306.

Dated: February 6, 2004

By:

Colleen Chien, Reg. No. P-55,062

COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

AMENDMENT A

SIR:

In response to the Office Action mailed October 22, 2003, please amend the application
as follows:

PATENT

IN THE CLAIMS:

Please amend the claims as follows.

1. (Currently Amended) A method for sourcing a featured item for an on-line group-buying sale, comprising:

communicating to a supplier a featured item quantity and a featured item time reservation;

receiving the supplier's consent to reserve the featured item quantity and for the negotiated featured item time reservation for sale in the on-line group-buying sale;

conducting an on-line group-buying sale for the featured item during the featured item time reservation, selling at least a portion of the featured item quantity to one or more buyers; and

~~sending shipment instructions to the supplier regarding~~ supplying the featured items sold in the on-line group-buying sale to one or more buyers by instructing the supplier to provide the items to one or more buyers.

2. (Original) The method of claim 1, further comprising:

executing a binding agreement with the supplier regarding the featured item quantity and the featured item time reservation, wherein the binding agreement requires the supplier to retain the featured item quantity for the featured item time reservation.

3. (Original) The method of claim 2, further comprising:

providing the supplier with consideration in exchange for the supplier's execution of the binding agreement.

4. (Original) The method of claim 3 wherein the consideration is at least one of a reserve price, an agreement to reserve another featured item, and a deposit.

PATENT

5. (Original) The method of claim 1, further comprising:

communicating to the supplier payment terms regarding the featured item to be sold during the on-line group-buying sale before conducting the on-line group-buying sale; and
paying the supplier for a number of featured items sold during the on-line group-buying sale.

6. (Currently Amended) A method for sourcing a featured item for an on-line group-buying sale, comprising:

receiving from a seller a featured item quantity and a featured item time reservation;
negotiating with the seller to determine a ~~negotiated~~ featured item quantity and a ~~negotiated~~ featured item time reservation;
executing a binding agreement with the seller regarding the ~~negotiated~~ featured item quantity and the ~~negotiated~~ featured item time reservation, wherein the binding agreement requires the seller to reserve retention of the negotiated featured item quantity for the negotiated-featured item time reservation for sale in the on-line group buying sale;
receiving a confirmation of the sale of a featured item in an on-line group-buying sale;
and
supplying ~~receiving shipment instructions from the seller regarding a featured~~ item sold during the on-line group-buying sale responsive to instructions from the seller.

7. (Original) The method of claim 6, further comprising:

retrieving the number of featured items sold during the on-line group-buying sale from a warehouse; and
packaging the number of featured items sold during the on-line group-buying sale for shipment to buyers.

PATENT

8. (Original) The method of claim 6, further comprising:

receiving consideration from the seller in exchange for executing the binding agreement.

9. (Original) The method of claim 8 wherein the consideration comprises at least one of a reserve price, an agreement to reserve another featured item, and a deposit.

10-11. (Cancelled)

12. (Original) The method of claim 6, further comprising:

communicating to the seller payment terms regarding the featured items to be sold during the on-line group-buying sale.

13. (Withdrawn) A computing system for sourcing a featured item for an on-line group-buying sale, comprising:

a supplier communications module configured to send a supplier a featured item quantity and a featured item time reservation;

a virtual inventory module configured to receive the supplier's consent to reserve a negotiated featured item quantity and a negotiated featured item time reservation; and

an on-line group-buying mechanism configured to conduct at least one on-line group-buying sale during the negotiated featured item time reservation, selling at least a portion of the negotiated featured item quantity to one or more buyers.

14. (Withdrawn) The system of claim 13 wherein the virtual inventor module is further configured to receive a binding agreement from the supplier regarding the negotiated featured item quantity and the negotiated featured item time reservation, wherein the binding agreement requires the supplier to retain the negotiated featured item quantity for the negotiated featured item time reservation.

15. (Withdrawn) The system of claim 13, further comprising:

a data repository configured to retain data regarding the negotiated featured item quantity and the negotiated featured item time reservation.

PATENT

16. (Withdrawn) The system of claim 13 wherein the supplier communications module is further configured to send shipment instructions to the supplier regarding a number of featured items sold during the on-line group-buying sale.

17. (Withdrawn) The system of claim 13 wherein the supplier communications module is further configured to provide the supplier with data regarding the seller's consideration for obtaining the supplier's consent to be contractually bound to retain the negotiated featured item quantity for the negotiated time duration.

18. (Withdrawn) The system of claim 17 wherein the consideration data comprises at least one of a reserve price, an agreement to reserve another featured item, and a deposit.

19. (Withdrawn) The system of claim 13 wherein the negotiated featured item quantity equals the featured item quantity.

20. (Withdrawn) The system of claim 13 wherein the negotiated feature item time reservation equals the featured item time reservation.

Kindly add the following new claims:

21. (New) The method of claim 1 wherein the featured item is sold in the on-line group-buying sale at the same price to all buyers of the featured item.

22. (New) The method of claim 6 wherein the featured item is sold in the on-line group-buying sale at the same price to all buyers of the featured item.

23. (New) A method for sourcing an item for an on-line group-buying sale, the method comprising:

reserving a specified quantity of the item for a specified period of time for sale in the on-line group-buying sale with a supplier of the item;
selling a plurality of the items during the specified period of time to a plurality of buyers in the on-line group-buying sale; and

PATENT

supplying the items bought by buyers in the on-line group-buying sale to the buyers
by instructing the supplier to provide the featured items to the buyers.

24. (New) The method of claim 23 wherein the featured item is sold in the on-line group-buying sale at the same price to all buyers of the featured item.

25. (New) The method of claim 23 wherein reserving a specified quantity of the item during a specified period of time further comprises forming an agreement with the supplier in which consideration is provided to the supplier in exchange for the supplier's commitment to reserve the specified quantity of the item during the specified period time.

26. (New) The method of claim 23 further comprising reserving the specified quantity of the item at a specified price.

27. (New) The method of claim 23 further comprising the step of using a computer-implemented system to reserve the specified quantity of the item during the specified period of time with the supplier.

28. (New) The method of claim 27 further comprising the step of using the computer-implemented system to compensate the supplier for the items supplied by the supplier to buyers in the on-line group-buying sale.

29. (New) The method of claim 23 further comprising the step of forming an option contract with a supplier of the item, the option for the seller to purchase the specified quantity of the item for the specified period of time and expiring after an option period.

30. (New) The method of claim 29, further comprising wherein the featured item is sold in the on-line group-buying sale at the same price to all buyers of the featured item.

31. (New) A method of doing business, comprising:

forming an option contract between a supplier of an item and a seller of the item, the option for the seller to purchase a quantity of the items and expiring after an option period; and

PATENT

forming a group sale of the item between the seller and a plurality of buyers during the option period wherein all of the buyers pay the same price for the items, wherein the seller provides to the supplier delivery instructions for delivering the items directly from the supplier to the buyers.

32. (New) The method of claim 31, wherein the group sale comprises an on-line group-buying sale

33. (New) A method of selling quantities of an item, the method comprising:
forming an option contract to obtain an option to purchase a quantity of an item during an option period;
receiving, during the option period, individual offers from buyers each for an individual quantity of the item at an individual unit price;
aggregating individual offers from the buyers to form an aggregated offer having an aggregated quantity of the individual quantities of the offers;
responsive to an aggregated offer for a quantity of the item above a starting quantity, lowering the unit price of the item below a starting unit price; and
accepting a final aggregated offer for a final quantity of the item at a final unit price, wherein accepting the final aggregated offer automatically executes contracts to sell the item to all the buyers whose offers are reflected in the final aggregated offer, wherein the contracts with the buyers are at the same final unit price and are for the individual quantities requested in the buyers' individual offers.

34. (New) The method of claim 33 further comprising the steps of:
receiving individual offers from buyers in an on-line group buying sale; and
accepting a final aggregated offer for a final quantity of the item, thereby consummating an on-line group buying sale.

PATENT

35. (New) The method of claim 33 further comprising the step of using a computer-implemented system to execute contracts to sell the item to all the buyers whose offers are reflected in the final aggregated offer.

36. (New) A combination of contractual relations, comprising:

an option contract between a seller and a supplier granting the seller a right to

purchase a reserved quantity of items from the supplier during an option period; and

a plurality of individual sales contracts between the seller and a plurality of respective, individual buyers, each contract for the sale of a portion of the reserved quantity of the items, wherein the plurality of sales contracts result from an on-line group-buying sale from the seller to the buyers, all of the individual sale contracts at the same unit price, the unit price determined based on the aggregate quantity of items sold in the plurality of sales contracts.

PATENT

REMARKS

Claims 1-9, 12 and 21-36 are pending in this application. In this Response, Applicants have canceled claims 10-11, added claims 21-36, and confirm the election to withdraw claims 13-20 from further consideration made during the Examiner's telephone conversation with Thomas Ewing on June 9, 2003.

The Examiner rejected claims 1-12 under 35 U.S.C. 103 as being unpatentable over Walker in view of the Second Restatement of Contracts ("the Restatement"). Applicants traverse these rejections as applied to pending claims 1-12, and if applied to them, to claims 21-30 because the references in combination do not disclose or suggest the invention as claimed. Furthermore, there is no suggestion to combine the Restatement with Walker to achieve the patented invention. For these reasons, the claims, as currently presented, are patentable over Walker and the Restatement.

Each of pending claims 1-9, 12, and 21-30 recite a method "for sourcing a featured item [or item] for an on-line group-buying sale." (See, e.g. independent claims 1, 6, and 23 *supra*.) To accomplish this sourcing, claim 1 and 6 recite, "to reserve the featured item quantity for the featured item time reservation for sale in the on-line group-buying sale," and claim 23 recites "reserving a specified quantity of the item for a specified period of time for sale in the on-line group-buying sale." Reserving an item for sale in an on-line group-buying sale as claimed beneficially gives the seller the flexibility to purchase the items only if a sale is successful, and further to purchase only the quantity of items sold during the group buy, thereby avoiding the purchase of excess items. This allows the seller to manage his inventory when the outcome of a group-buying sale is unknown and uncertain. However, neither Walker nor the Restatement disclose or suggest the claimed limitations.

Walker discloses "an aggregate conditional purchase offer (CPO) management system for receiving and processing CPOs from buyers for one or more goods or services". (Abstract) Directed towards the management of offers, Walker is generally unconcerned with how the

PATENT

inventory of goods is achieved, and thus, it contains little if any description of "sourcing" an on-line group-buying sale. At best, Walker provides:

"a CPO rule for a given agency-based airline can specify that the airline will accept any aggregate CPO for travel between Newark, N.J. (EWR) and Orlando, Fla. (MCO) during the month of October, 1997, provided that (i) the customer travels between Tuesday and Thursday, (ii) the tickets are booked within 21 days of departure, (iii) the price is at least \$165 per ticket, (iv) **K-class inventory is available on all flight segments of the customer's itinerary**, and (v) there are at least two (2) passengers travelling together." (emphasis added) (Walker, 7:22-31)

This excerpt merely describes a rule that an airline would use to determine what offers an airline will accept, not how the airline will source the tickets it sells. As the highlighted section makes clear, the "CPO rule" does not require "reserving" items for an on-line group-buying sale as claimed. Quite the contrary, an offer is only accepted if "inventory is available" at the time of booking. There is simply no discussion or mention in Walker of how this inventory is obtained, and there is no hint that it would be obtained by a supplier "reserving" an item for subsequent sale as claimed.

The Examiner thus attempts to rely on the Restatement of Contracts to overcome this deficiency of Walker. But this reliance is misplaced. The Restatement, as reproduced by Examiner, contains little more than the legal definition of an option contract and illustrations of option contracts. The Restatement discloses "an option contract is a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer". (§25) The passage cited by the Examiner states:

"A promises B under seal or in return for \$100 paid or promise by B that A will sell B 100 shares of stock in a specified corporation for \$5,000 at any time within thirty days that B selects. There is an option contract under which B has an option." (Page 73, Illustration 1.)

This passage describes the sale of an option to buy stock, rather than stock itself, from A to B. But it does not address how A will source the stock or suggest that B is using the option contract to source a sale to a third party C. Applicants have reviewed the entire Restatement

PATENT

excerpt provided, and find no mention of “reserving” an item for subsequent sale as claimed, or any option contract in which B uses the option to reserve a supply of items for sale to a third party C.

Thus, it follows that the combination of Walker and the Restatement does not disclose or suggest the claimed invention. As discussed above, there is scant discussion in either reference of how to source a sale. In Walker, buyers purchase airline tickets from sellers using “conditional purchase offer[s]”. In the Restatement, “A” (the buyer) receives an option from “B” (the seller) to purchase stock at a set price during a set period of time. Even under the most generous interpretation, the combination of Walker and the Restatement merely results in Walker’s buyers obtaining options from the airline to purchase an airline ticket. However, there is no suggestion or hint that options be used to source the tickets in the first place. Thus, the references, alone or in combination, do not disclose or suggest the claimed invention.

Incidentally, even assuming *arguendo* that the combination of Walker and the Restatement did overcome these problems, there is no suggestion or motivation that Walker and the Restatement should be combined to meet the claimed invention in the first place. To establish a prima facie case of obviousness, the Examiner must show a motivation that is specific enough to modify the references to result in the claimed invention. A general statement of a desirable objective cannot by itself provide the required specific motivation. (See, e.g. *In re Anita Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) (emphasizing that the evidence of a “suggestion, teaching, or motivation to combine...must be *clear and particular*.” (emphasis added))). Here, the Examiner’s alleged “motivation” to “assure that the supply is available for the buyers/customers making purchases on the on-line group buying system” (Office Action, p. 4) is simply too general and vague to suggest the specific combination of Walker with the Restatement in a way that results in the claimed invention. This is because the desired “assurance” could conceivably be reached through any number of means – for instance, stockpiling, vertical integration, long-term supply contracts, or selling only what’s in stock, to name just a few. Thus, nothing in the references themselves or in the alleged “motivation” particularly suggests

PATENT

the specific use of an option to provide the reserved quantity of items as claimed. Given the absence of such a suggestion in the references or in the motivation, the combination can only spring from one place: the Examiner's reconstruction of the invention having been instructed by the teachings of the present application, since no where else is there any basis for combining the references as claimed.

Applicants also traverse Examiner's rejection of claims 1-12 (and by extension, claims 21-30, 32, 34, and 36) as being unpatentable over Peterson in view of the Restatement. The references in combination simply do not disclose or suggest the invention as claimed.

Each of the pending claims recite "on-line group-buying." (See, e.g. independent claims 1, 6, and 23 *supra*.) Neither the Restatement nor Peterson disclose this element. As described above, the Restatement, a legal treatise, merely contains a legal description of option contracts. There is no mention of group buying, much less "on-line group-buying." Neither does Peterson disclose group buying or "on-line group-buying" as claimed. At best, Peterson discloses a "Buying Group Inventory Network." (19:63). Although "inventory information [is] shared by the Buying Group Members" (19:67-20:1), there is no disclosure that the members together buy items in an "on-line group-buying" sale as claimed. In other words: the mere happenstance that Peterson uses the words "Buying Group" does not mean that he discloses "online group buying" as claimed.

The combination of Peterson and the Restatement does not create a means to fill this deficiency – the purchase of items by a group of buyers as claimed is not disclosed by Peterson, the Restatement, or their combination. There is no mention or suggestion in either of the references that buying happens except for conventionally, as carried out by individuals; e.g. in the Restatement, "B" sells an option to "A" (Page 73, Illustration 1); and in Peterson, "a first vendor agrees to sell to a second vendor". (Abstract) Combining these two references does not produce "on-line group-buying" as claimed. At best the combination merely suggests that the first vendor sell an "option" to the second vendor. This is, quite clearly, not the claimed invention.


PATENT

Accordingly, Applicants submit that the claims are patentably distinct over the cited art. Consideration of this application and the early allowance of all claims herein is requested.

Should the Examiner wish to discuss the above amendments and remarks, or if the Examiner believes that for any reason direct contact with Applicants' representative would help to advance the prosecution of this case to finality, the Examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,
TOM VAN HORN *et al.*

Dated: February 6, 2004

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AMENDMENT A

Applicant: Tom Van Horn et al.
 App. No.: 09/863,801
 Filing Date: May 22, 2001
 Title: ATTAINING PRODUCT INVENTORY GROUPINGS FOR SALES IN A GROUP-BUYING ENVIRONMENT
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